

Chapter 170: SHELLFISH CONSERVATION

[HISTORY: Adopted by the Town Council of the Town of Bar Harbor 10-2-1990 as § 07.02 of the 1990 Code; amended 2-3-1998; 11-16-1999; 4-3-2001. Subsequent amendments noted where applicable.]

GENERAL REFERENCES

Port and harbor — See Ch. 153.

§ 170-1. Authority.

This chapter is enacted in accordance with 12 M.R.S.A. § 6671.

§ 170-2. Purpose.

The purpose of this chapter is to establish a shellfish conservation program for the Town of Bar Harbor that will ensure the protection and optimum utilization of shellfish resources within its limits. These goals will be achieved by means including:

- A. Licensing;
- B. Limiting the number of shellfish harvesters;
- C. Restricting the time and area where digging is permitted;
- D. Limiting the minimum size of clams taken; and
- E. Limiting the amount of clams taken daily by a harvester.

§ 170-3. Marine Resources Committee.

- A. The shellfish conservation program for the Town of Bar Harbor will be administered by the Marine Resources Committee, consisting of seven members to be appointed by the Town Council for terms of three years, except for those seats filled in 2005; two members shall be appointed for one-year terms, two members shall be appointed for two-year terms and three members shall be appointed for three-year terms. **[Amended 5-17-2005 by Ord. No. 2005-04]**
- B. Committee's responsibilities. The Committee's responsibilities include:
 - (1) Establishing annually, in conjunction with the Maine Department of Marine Resources, the number of shellfish digging licenses to be issued.
 - (2) Surveying each clam-producing area at least once each three years to establish size distribution and density and annually to estimate the status of the Town's shellfish resources.
 - (3) Submitting to the Town Council proposals for the expenditures of funds for the purpose of shellfish conservation.
 - (4) Keeping this chapter under review and making recommendations for its amendments.
 - (5) Securing and maintaining records of shellfish harvest from the Town's managed shellfish areas and closed areas that are conditionally opened by the Department of Marine Resources.
 - (6) Recommending conservation closures and openings to the Town Council in conjunction with the area biologists of the Department of Marine Resources.

- (7) Submitting an annual report to the municipality and the Department of Marine Resources covering the above topics and all other Committee activities.
- (8) Submitting to the Town Council proposals for ordinances that affect land use in areas where shellfish beds will be impacted.
- (9) Submitting to the Town Council proposals for ordinances that affect water use in areas where shellfish beds will be impacted.
- (10) Supporting water quality monitoring efforts by local citizen and school groups that are working with the Maine Department of Marine Resources in areas where shellfish beds are located. This includes but is not restricted to: **[Amended 5-17-2005 by Ord. No. 2005-4]**
 - (a) Assisting with selection of monitoring sites;
 - (b) Attending training sessions;
 - (c) Participating in water sample collection;
 - (d) Assisting with watershed surveys;
 - (e) Submitting to the Town Council proposals for the expenditures of funds for the purpose of addressing water quality related issues;
 - (f) Working with the Conservation Commission to evaluate water quality data; and
 - (g) Making recommendations to the Town Council for changes in land or water use practices that are impacting shellfish beds.

§ 170-4. Definitions. [Amended 5-17-2005 by Ord. No. 2005-4]

As used in this chapter, the following terms shall have the meanings indicated:

NONRESIDENT — Anyone not qualified as a resident under this chapter.

RESIDENT — A person who has been domiciled in this municipality for at least three months immediately prior to the time his/her claim of such residence is made.

SHELLFISH and CLAMS — Soft-shell clams, *Mya arenaria*.

§ 170-5. Licensing.

A. Generally.

- (1) License required. It is unlawful for any person to dig or take shellfish from this municipality without having a current license issued by this municipality as provided by this chapter.
- (2) License fees waived. Resident recreational shellfish license fees will be waived for residents over 65 and under 16 years of age.
- (3) State commercial license. A commercial shellfish harvester must have a valid commercial shellfish license issued by the Maine Department of Marine Resources. This license does not need to be purchased prior to purchase of the Town license.

B. Designation, scope and qualifications. [Amended 5-18-2004 by Ord. No. 2004-4]

- (1) Resident commercial shellfish license. The license is available to residents of the Town of Bar Harbor. It entitles the holder to dig, take or possess any amount of shellfish from the shores and flats of this municipality, except where lower limits have been

established for certain areas.

- (2) Nonresident commercial shellfish license. The license is available to nonresidents of this municipality. It entitles the holder to dig, take or possess any amount of shellfish from the shores and flats of this municipality, except where lower limits have been established for certain areas.
 - (3) Resident recreational shellfish license. The license is available to residents and real estate taxpayers of this municipality and reciprocating municipalities. It entitles the holder to dig, take or possess no more than one peck of shellfish in any one day for personal use. This license is not available, nor valid, to holders of a Maine commercial shellfish license.
 - (4) Nonresident recreational shellfish license. The license is available to any person not a resident of this municipality. It entitles the holder to dig, take or possess not more than one peck of shellfish in any one day for personal use. This license is not available, nor valid, to holders of a Maine commercial shellfish license.
 - (5) All shellfish licenses. It shall be unlawful for an individual to possess any Bar Harbor shellfish license if their state shellfish harvesters license is under suspension or revocation for any reason for the period of state suspension at a minimum.
 - (6) License must be signed and consent to inspection. In order for a Town shellfish license to be valid, it must be signed. Any person who signs a Town shellfish license has a duty to submit to inspection and search for violations related to the licensed activity by the Town Shellfish Warden or other Law Enforcement Officer under the following conditions:
 - (a) Watercraft or vehicles and the equipment located on watercraft or vehicles which are used primarily during shellfish harvesting activity and requiring a Town license may be searched or inspected at any time if the Shellfish Warden or other Law Enforcement Officer has a reasonable suspicion of a violation of the Town Shellfish Ordinance by the licensed individual.
- C. Application procedure. Any person may apply to the Town Clerk, on a form provided by the municipality, for the licenses required by this chapter.
- (1) Contents of the application. The application must be in the form of an affidavit and must contain the applicant's name, current address, birth date, height, weight, signature and any other information the municipality may require.
 - (2) Misrepresentation. Any person who gives false information on a license application will cause said license to become invalid.
- D. Fees. Fees for the various classifications of licenses shall be established by the Town Council from time to time. License fees must accompany in full an application for any license. The Town Clerk shall transfer all fees received to the Town Treasurer. Fees received for shellfish licensing shall be used by the Town for shellfish management, conservation and enforcement. Fifty cents may be retained by the Town Clerk's office, or a designated agent, at point of purchase.
- E. Limitation of diggers. Because the shellfish resources are limited and a commercial or recreational digger can be expected to harvest a certain volume of clams per year, the number of diggers must be controlled. This number will vary from year to year depending upon estimates of the resource capabilities and management requirements consistent with good resource utilization. The following procedures will be followed to exercise the control:
- [Amended 5-17-2005 by Ord. No. 2005-04]**
- (1) Number of licenses established. Prior to May 1 the Town Marine Resources Committee, with the approval of the Maine Commissioner of Marine Resources, will establish the number of commercial and recreational licenses to be permitted following the requirements of 12 M.R.S.A. § 6671(3-A).

- (2) Notice to Town Clerk. Prior to June 1 the Town Marine Resources Committee will notify the Town Clerk in writing of the number of licenses to be issued.
 - (3) Public notice. Not less than 10 days prior to the period of issuance notice of the number of licenses to be issued and the procedure for application shall be published in a trade or industry publication, or in a newspaper or combination of newspapers with general circulation, effective in reaching persons affected. Notice shall also be posted in the municipal offices until the period of issuance concludes.
 - (4) Dates of issuance. The Town Clerk shall issue licenses to residents and nonresidents as allocated from the first day of July until the 28th day of September, after which licenses shall be issued to residents and nonresidents on a first come, first served basis.
- F. License expiration date. Each license issued under the authority of this chapter expires at midnight on the 30th day of June following the date of issue.
- G. Suspension. Any shellfish licensee convicted of a violation of this chapter shall have his/her shellfish license automatically suspended for a period of 30 days. Any subsequent conviction would result in loss of shellfish license for one year. **[Amended 5-18-2004 by Ord. No. 2004-4]**
- (1) Reapplication. A licensee whose shellfish license has been suspended pursuant to this chapter may reapply for a license only after the suspension period has expired.
 - (2) Effective date of suspension. The suspension shall be effective from the date of mailing of a notice of suspension by the Town Clerk to the licensee.

§ 170-6. Opening and closing of harvest areas. [Amended 5-17-2005 by Ord. No. 2005-04]

The Town Council, upon the approval of the Maine Commissioner of Marine Resources, may open and close areas for shellfish harvest. Upon recommendation of the Marine Resources Committee and concurrence by the Maine Department of Marine Resources area biologist that the status of the shellfish resource and other factors bearing on sound management indicate that an area should be opened or closed, the Town Council may call a public hearing on 10 days' notice published in a newspaper having general circulation in the Town, stating the time, place and subject matter of the hearing, and shall send a copy of the notice to the Department of Marine Resources. The decision of the Town Council made after the hearing shall be based on findings of fact.

§ 170-7. Limitation on clams to be taken.

- A. Definitions. As used in this section, the following terms shall have the meanings indicated:
- LOT — The total number of soft-shell clams in any bulk pile. Where soft-shell clams are in a box, barrel or other container, the contents of each box, barrel or other container constitutes a separate lot.
- NIGHT DIGGING — The taking of shellfish during the period from 30 minutes after sunset to 30 minutes before sunrise. **[Added 5-18-2004 by Ord. No. 2004-4]**
- POSSESS — Dig, take, harvest, ship, transport, hold, buy and sell, retail or wholesale, soft-shell clam shell stock.
- B. Tolerance. Any person may possess soft-shell clams that are less than two inches if they comprise less than 10% of any lot. The tolerance shall be determined by numerical count of not less than one peck nor more than four pecks taken at random from various parts of the lot or by a count of the entire lot if it contains less than one peck.
- C. Night digging. Shellfish harvesting in Bar Harbor is limited to the period from 30 minutes

before sunrise to 30 minutes after sunset, with no night digging of soft shell clams allowed except by special permit. **[Added 5-18-2004 by Ord. No. 2004-4]**

§ 170-8. Violations and penalties.

A person who violates this chapter shall be punished as provided by 12 M.R.S.A. § 6671(6-A) and (10).

§ 170-9. When effective.

This chapter, which has been approved by the Maine Commissioner of Marine Resources, shall become effective after its adoption by the municipality, provided a certified copy of this chapter is filed with the Commissioner within 20 days of its adoption.